

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay Service)	CG Docket No. 10-51
Program)	
)	
Telecommunications Relay Services and Speech-)	
to-Speech Services for Individuals with Hearing)	CG Docket. 03-123
and Speech Disabilities)	

COMMENTS OF ZVRS TO THE COMPENSATION RATE FREEZE

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EXECUTIVE SUMMARY

ZVRS, a small Tier 2 provider of VRS service and a pioneer in the VRS industry, urges the Commission in response to questions in the FNPRM to redraw the “dividing line” for the rate freeze and extend it to all “smaller VRS providers.” At a minimum the line should be moved to include, ZVRS, the lone Tier 2 provider, because the Commission has acknowledged that the “smaller VRS providers” that need opportunities to reach scale and compete effectively include the Tier 1 and Tier 2 providers.

The compensation rates applicable to Tier 1 and Tier 2 providers should be frozen at the levels in effect for Tier 1 and Tier 2 on June 30, 2015. This freeze should remain in effect until the Commission implements the competitive reforms promised in the Commission’s 2011 VRS FNPRM, including mandates for interoperability and portability.

Simply put, the Commission cannot allow the negative impact on ZVRS of the rate cuts to date to continue. Prior to establishment of the VRS Reform Order glide path in 2013, ZVRS was making tangible, steady progress toward becoming a small, but legitimate competitor. In fact, from *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** in the months leading up to adoption of the glide path compensation rates, ZVRS saw *****BEGIN CONFIDENTIAL INFORMATION*****

*****END CONFIDENTIAL INFORMATION***** of significant growth, month over month, peaking at *****BEGIN CONFIDENTIAL INFORMATION*****

*****END CONFIDENTIAL INFORMATION*****. However, as the rates decreased, ZVRS’s monthly volume *****BEGIN CONFIDENTIAL INFORMATION*****

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As discussed in these comments, there is good justification for the Commission to redraw the dividing line for the proposed rate freeze to include the sole Tier 2 provider, ZVRS: (A) It is consistent with the Commission's characterization of Tier 1 and Tier 2 providers as the "smaller VRS providers"; (B) The financial assumptions underlying the justification to include only the "three smallest providers" in the rate freeze are incomplete or in error and don't take into consideration actual and projected cost increases for ZVRS; (C) The operating realities for ZVRS are far more similar to the Tier 1 providers than to Sorenson, and similarly situated VRS providers should be treated the same; (D) Failure to apply the rate freeze in a competitively neutral manner to all "smaller VRS providers" in Tier 1 and Tier 2, including ZVRS, would be inequitable and discriminatory against ZVRS, unfairly disadvantaging them among the smaller VRS providers; (E) The rollback in the Tier 1 and Tier 2 rates for the second half of 2016 is the largest-ever rate reduction in the VRS program and will have a devastating impact on the ability of ZVRS to maintain market share; (F) All smaller providers, including ZVRS, need rate relief in order to retain the meager market share they have because there is not a level playing field for VRS today; (G) It will benefit the deaf and hard of hearing community, and the VRS program as a whole; and (H) The deaf community is already alarmed by deterioration of VRS service because of prior rate cuts and, without expansion of the freeze, service from ZVRS will deteriorate.

Without rate relief for ZVRS, the Tier 1 and Tier 2 rate cuts for the second half of 2016, which are the largest-ever rate reductions in the VRS program, will have a devastating impact on the ability of ZVRS, who is already *****BEGIN CONFIDENTIAL INFORMATION***]**

*****END CONFIDENTIAL INFORMATION***]**to maintain any form of competitiveness. The planned rate cuts will cause ZVRS to lose *****BEGIN CONFIDENTIAL INFORMATION***]** *****END CONFIDENTIAL INFORMATION***]** in revenues. In order to make up this shortfall, ZVRS will have to produce *****BEGIN CONFIDENTIAL INFORMATION***]**

*****END CONFIDENTIAL INFORMATION***]**This would require ZVRS to grow its 2016 minutes by approximately *****BEGIN CONFIDENTIAL INFORMATION***]** *****END CONFIDENTIAL INFORMATION***]** over its 2015 volumes, which, in any circumstance, would be incredibly difficult to achieve, but is practically impossible in 2016 without the promised structural reforms.

The ZVRS team is eager to build upon its 16-year legacy in the VRS business and has plans to further innovate VRS service for the deaf and hard of hearing community. However, the VRS Reform Order rate cuts have stifled the company's ability to move forward with its plans, forcing it to focus on regaining lost revenue, stemming losses, and retaining market share, rather than growth and innovation. ZVRS pleads in this filing for the Commission to extend the rate freeze to all "smaller VRS providers," including ZVRS, and support the important work ZVRS is doing for the deaf and hard of hearing until the anticipated structural reforms are in place.

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COMMENTS OF ZVRS TO THE COMPENSATION RATE FREEZE

CSDVRS, LLC d/b/a ZVRS (“ZVRS”) appreciates the opportunity to weigh in with the Federal Communications Commission (“FCC”) regarding its proposal to modify the four-year compensation rate plan for the video relay service (“VRS”).¹ ZVRS supports the Commission’s decision to impose a rate freeze for smaller players, but ZVRS respectfully suggests that the FCC has not drawn the dividing line for the proposed rate freeze in the right place, and should consider “a different dividing line”² that includes both Tier 1 and Tier 2 providers, at a minimum. Extension of the rate freeze is essential to preserving the viability of smaller players and promoting some meager measure of competition in the VRS market in the face of Sorenson’s 78% market domination, the multi-year absence of a level playing field, the Commission’s delays in implementing structural reforms, the negative impacts of rate cuts on smaller players to date, and the inability of smaller players to gain any market share since 2013 when cuts commenced (which will only continue).

¹ See *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Further Notice of Proposed Rulemaking, FCC 15-143 (2015) (“FNPRM”).

² *Id.* at para. 18.

As the Commission acknowledges in the *FNPRM*, Tier 1 *and* Tier 2 providers are the “smaller VRS providers.”³ Consistent with this rationale, and for many other reasons as detailed in these comments, the Commission should extend the proposed rate freeze beyond the Tier 1 VRS providers and include, at a minimum, the lone Tier 2 VRS provider, ZVRS. The operating realities for ZVRS are much more akin to the operating realities for the three Tier 1 providers, and similarly situated providers should be treated the same. ZVRS has just *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** of the VRS market and *****BEGIN CONFIDENTIAL INFORMATION*****

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Similar to the relief sought in the Emergency Petition filed by Convo, CAAG/Star VRS and ASL/Global VRS,⁴ ZVRS urges the Commission to freeze the compensation rates applicable to Tier 1 *and* Tier 2 providers at the levels in effect for Tier 1 and Tier 2 on June 30, 2015. This freeze should remain in effect until the Commission implements the competitive reforms promised in the Commission’s 2011 *FNPRM*,⁵ including mandates for interoperability and portability. Before further rate cuts are entertained, the Commission must provide the smallest players with an adequate transition and ramp up period so that, as Purple Communications points out, long-standing market

³ *Id.* at para. 5.

⁴ See Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver, CG Docket Nos. 10-51, 03-123, at 11-12 (filed Nov. 25, 2015) (“Tier 1 Providers Waiver Petition”). The petitioners are Convo Communications, LLC (“Convo”), Hancock Jahn Lee & Puckett, LLC d/b/a Communications Access Ability Group/Star VRS (“CAAG/Star VRS”), and ASL/Global VRS Services Holdings, LLC (“ASL/Global VRS”) (collectively, the “Tier 1 providers”).

⁵ *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 & 03-123 *et al.*, Further Notice of Proposed Rulemaking, FCC 11-184 (2011) (“2011 VRS *FNPRM*”).

imbalances can be corrected.⁶ ZVRS will not be able to sustain its current market share, much less grow and compete, if it must face not only the anticipated Tier 1 rate decreases, but also the anticipated and unprecedented Tier 2 rate decreases in 2016. These rate cuts will disproportionately impact ZVRS, the lone Tier 2 provider, making even more urgent the need to extend the rate freeze to one of the “smaller VRS providers.”

I. BACKGROUND ON ZVRS.

A. ZVRS and the Service it Provides Are Unique.

ZVRS was the first video relay company in the United States, originally launching service under the name CSDVRS in Austin, Texas in 1999. Today, ZVRS is headquartered in Clearwater, Florida and has *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** call centers and *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** full-time and part-time employees across 27 states.

Similar to the three smallest VRS providers, ZVRS and the service it provides are unique. In addition to pioneering VRS services in the United States, *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** of ZVRS employees, *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** (not including the interpreter pool), are deaf or hard of hearing, including a number of management team members who report directly to the CEO. This commitment to employing the deaf and hard of hearing reflects the company’s belief that “the shoemaker should wear the shoes he produces.” ZVRS strives for and provides real functional

⁶ The Commission notes that “some providers and consumers have expressed the view that the implementation of structural reforms has not progressed sufficiently to date to allow a fair test of small providers’ ability to compete on a level playing field.” FNPRM at para 19. See, e.g., Letter from Monica S. Desai, Counsel to Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123 (filed Nov. 25, 2015) (“Purple November 25 Ex Parte”).

equivalency for the entire deaf community, because it matters to ZVRS – not just as a professional matter but as a personal one. In fact, the guiding principles of ZVRS reflect a company-wide dedication to making a personal connection with the VRS community, improving the lives of deaf and hard of hearing individuals by offering the highest-quality video relay interpreting services with leading-edge technology.

ZVRS also is unique because its interpreters are 100% certified and screened to be qualified under the stringent criteria established by the Registry of Interpreters for the Deaf (“RID”). Other providers market themselves as also employing “certified” interpreters, but these interpreters are certified by processes that are internally developed by the companies themselves, and are not subject to the rigorous criteria of expert organizations such as RID. Beyond certification, ZVRS requires its video interpreters to work in the deaf community for a minimum of three years before they can be hired as a ZVRS interpreter. This is to ensure that the interpreters have gained experience in an environment where they can learn the importance of context. When providing VRS interpretation, there is no context provided before the interpreter accepts an incoming call. VRS interpretation is thus among the most difficult interpreting assignments that an interpreter can accept, and rigorous certification and training is needed to provide a quality service.

The ZVRS commitment to employing only experienced, RID-certified interpreters is a significant investment. However, the result is a better quality, and more efficient, conversation between the videophone user and the hearing telephone user. This factor alone demonstrates in a tangible manner how ZVRS strives every day for true “functional equivalence” in its communications. ZVRS interpreters also must follow the highest standards of service excellence—above and beyond what the Commission requires. They abide by the Professional Code of Conduct developed by the National Association of the Deaf (“NAD”) and RID. ZVRS customers rest

assured that their conversations are facilitated by professionals and are handled expertly and efficiently, which benefits both ZVRS customers and the TRS fund.

Beyond its commitment to employing deaf and hard of hearing individuals at all levels of the company, and its requirements for the highest-quality certified interpreters, ZVRS has conducted its business in a number of additional ways that maximize the benefits to the deaf and hard of hearing community, including: (1) limiting the size of call centers to ensure that ZVRS does not unintentionally sap the local deaf and hard of hearing community of much-needed community interpreters; (2) becoming the first VRS provider to offer 24/7 service; (3) offering the first single-line voice carryover service; and (4) introducing Spanish-language interpreting to the VRS market.

Today, the ZVRS management team is led by its new CEO, Sherri Turpin, a telecommunications industry veteran (Earthlink, XO Communications), and it is composed of telecommunications industry and deaf community veterans. The operational side of the business is led by an interpreter who is a child of deaf adults (CODA) who fully understands the importance of the high quality communication provided by ZVRS's RID-certified interpreters. The sales, business development and customer experience operations also are led by deaf people themselves who are fully in tune with the requirements and expectations of the community ZVRS serves.

Earlier this year, CSDVRS, LLC, the parent company of ZVRS, was acquired by Kinderhook Partners, LLC. Kinderhook is a private equity firm with over \$1.25 billion of committed capital and an investment philosophy that combines senior management and operating experience with financial and investment know-how. This philosophy is manifested in Kinderhook's relationship with ZVRS, where it plays a critical role with ZVRS management, assisting with decision-making and helping introduce ZVRS to valuable business partners. Kinderhook and ZVRS CEO, Sherri Turpin, have a long-standing working relationship. Kinderhook shares the ZVRS commitment to the deaf and hard of hearing community, and is

credited with helping ZVRS connect the deaf community to remarkable opportunities for new technology and services.

The ZVRS team is eager to build upon its 16-year legacy in the VRS business and has plans to further innovate VRS service for the deaf and hard of hearing community. However, the VRS Reform Order rate cuts have stifled the company's ability to move forward with its plans, forcing it to focus on regaining lost revenue, stemming losses of minutes, and retaining market share, rather than growth and innovation. ZVRS pleads in this filing for the Commission to extend the rate freeze to include ZVRS and support the important work ZVRS is doing, as one of the smaller VRS providers, until such time as the anticipated structural reforms are in place.

B. The ZVRS Market Share Was Growing, Month over Month, Until Adoption of the Glide Path, When the Company's Momentum Halted.

Prior to establishment of the VRS Reform Order glide path in 2013, ZVRS was making tangible, steady progress toward becoming a small, but legitimate competitor to at least Purple Communications (the relative market shares of ZVRS and Purple today are roughly *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** for ZVRS and *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** for Purple). In fact, as demonstrated in the chart below, *****BEGIN CONFIDENTIAL INFORMATION*****

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ZVRS is fighting to maintain a competition-neutral stance but, as the above data demonstrates, it is fighting a losing battle as the rate cuts progress. Although the company can and

will continue to meet the Commission's mandatory minimum standards for the provision of VRS,⁷ it cannot adequately invest in product development and consumer outreach at the rates in effect today, let alone at the deeply reduced rates planned for 2016 and 2017. If ZVRS is not afforded rate relief similar to the relief offered to the Tier 1 providers, it will be forced to *****BEGIN CONFIDENTIAL INFORMATION*****

*****END CONFIDENTIAL INFORMATION***** The high quality and efficiency of the ZVRS service, which is a benefit both for the deaf community and the TRS fund, will inevitably deteriorate, impacting the deaf community and the potential future competitiveness of ZVRS.

⁷ See 47 C.F.R. § 64.604.

II. EXTENDING THE FREEZE TO ALL “SMALLER PROVIDERS,” INCLUDING THOSE IN TIER 1 AND TIER 2, WILL ONLY NOMINALLY IMPACT THE TRS FUND AND IS JUSTIFIED FOR MANY REASONS.

The TRS Fund Administrator has estimated that the proposed rate freeze would add \$2.84 million to the TRS Fund revenue requirement, a 0.27% increase.⁸ The inclusion of the sole Tier 2 provider in the rate freeze would increase the impact on the 2015-16 TRS Fund revenue requirement to only \$3.79 million, or 0.36%.⁹ Similarly, the impact on the 2016-17 revenue requirement would be nominal by virtue of the fact that only a small—and declining—portion of ZVRS minutes fall in Tier 2.¹⁰ In view of the Commission’s stated desire to “maximize the opportunity for successful participation of multiple efficient providers in the future,”¹¹ and in view of the myriad public interest and long-term efficiency benefits that would generate by extending the rate freeze to include the sole Tier 2 provider, the Commission should, at a minimum, extend the rate freeze to these “smaller VRS providers” who fall entirely within Tiers 1 and 2, consistent with the Commission’s view that these providers need a reasonable opportunity to improve operations and compete.¹²

There is good justification for the Commission to redraw the dividing line for the proposed rate freeze to include the sole Tier 2 provider, ZVRS: (A) It is consistent with the Commission’s characterization of Tier 1 and Tier 2 providers as the “smaller VRS providers”; (B) The financial

⁸ See Rolka Loube, Supplemental Filing, CG Docket Nos. 03-123, 10-51, at 3 & Updated Exh. 2-2 (filed May 1, 2015); see also Tier 1 Providers Waiver Petition at 9 (calculating the percentage impact on the TRS Fund revenue requirement).

⁹ The Rolka Loube estimate appears to ascribe a \$946,666.67 incremental increase to the impact on the 2015-16 Fund revenue requirement for each additional provider included in a Tier 1 rate freeze. Thus, to calculate the minimal impact of extending the rate freeze to include ZVRS, this increment was added to the \$2.84 million estimated impact of freezing rates for the Tier 1 providers, bringing the total to \$3.79 million. This was then divided by the 2015-16 TRS Fund revenue requirement to produce the nominal percentage increase of 0.36%.

¹⁰ Based on internal projections, ZVRS believes the additional demand on the 2016-17 Fund by including ZVRS in the rate freeze, and freezing the Tier 2 rates for them for 16 months, would be just [***BEGIN CONFIDENTIAL INFORMATION***] [***END CONFIDENTIAL INFORMATION***].

¹¹ *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8698, para. 199 (2013) (“VRS Reform Order”).

¹² See *infra* section II.A.

assumptions underlying the justification to include only the “three smallest providers” in the rate freeze are incomplete or in error and do not take into consideration the actual and increasing costs of ZVRS; (C) The operating realities of the sole Tier 2 provider are far more similar to the Tier 1 providers than to Sorenson and the Commission should treat similarly situated providers the same; (D) Failure to apply the rate freeze in a competitively neutral manner to all “smaller VRS providers” in Tier 1 and Tier 2, including ZVRS, would be inequitable and discriminatory against ZVRS, unfairly disadvantaging them among the smaller VRS providers; (E) The cut in the Tier 1 and Tier 2 rates for the second half of 2016 is the largest-ever rate reduction in the VRS program and will

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All smaller providers, including ZVRS, need rate relief in order to retain the meager market share they have because there is not a level playing field for VRS today; (G) It will benefit the deaf and hard of hearing community, and the VRS program as a whole; and (H) The deaf community is already alarmed by deterioration of VRS service because of prior rate cuts, and without expansion of the freeze, service from the sole Tier 2 provider will deteriorate.

A. Extending the Rate Freeze to Include ZVRS is Consistent with the Commission’s Previous Characterization that Tier 2 Providers, Together with Tier 1 Providers, are the “Smaller VRS Providers”.

In view of the criteria the Commission used to determine the rate at which the glide path compensation rates would decrease, it would be inconsistent to exclude ZVRS, the sole Tier 2 provider, from the proposed rate freeze. By the Commission’s own well-reasoned plan, “the rates for the lower compensation rate tiers [Tier 1 and Tier 2] were set to be reduced at a slower pace than the rate for the highest rate tier” with the express purpose of ensuring “that *smaller VRS providers* have a reasonable opportunity to improve the efficiency of their operations and to reach the

optimum scale to compete effectively.”¹³ The Commission has previously regarded Tier 1 and Tier 2 providers as “smaller VRS providers,” with good reason, and it should not depart from that view for purposes of the rate freeze. Rate relief is critical at this juncture for both Tier 1 and Tier 2 providers.

It is important for the Commission to note the lack of any notable change in the market share of the Tier 1 and Tier 2 providers since 2013. This demonstrates that the frequency and depth of the rate cuts have, in fact, prevented the smaller providers, including ZVRS, from building the scale necessary to compete. Although the rate at which Tier 1 providers are compensated for their first 500,000 monthly minutes has been significantly higher than the compensation rates for other tiers, the four smallest VRS providers have yet to build any significant scale or make a dent in the market. *****BEGIN CONFIDENTIAL INFORMATION*****

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Moreover, the Commission cannot assert that 500,000 monthly minutes is the point at which VRS providers begin to achieve a minimally efficient scale. That data was gathered in 2010 and does not take into account either the continuous rise in the cost of providing VRS¹⁴ or the effect of ever-declining compensation rates on providers’ ability to grow their businesses and achieve actual economies of scale. If it were true that 500,000 minutes per month is the point at which there is enough scale to compete, then *****BEGIN CONFIDENTIAL INFORMATION*****

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¹³ FNPRM at para. 5; VRS Reform Order, 28 FCC Rcd at 8704, para. 214 (emphasis added).

¹⁴ See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projects VRS costs at the levels contained in Exhibit B; these figures will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

obvious that the “optimum scale to compete”¹⁵ is not achieved at 500,000 minutes or *****BEGIN
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In addition, the glide path rate cuts move the goalposts on achieving “minimally efficient scale” for smaller providers every 6 months. That is, with each rate reduction, regardless of the tier in which the reduction happens, the volume of calls needed to maintain operating margins correspondingly increases. For instance, in order for ZVRS to maintain its operating margins and support the high-quality services for which it is known, ZVRS would have to *****BEGIN
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In view of these market realities, and consistent with its earlier determination that Tier 1 and Tier 2 providers are the “smaller VRS providers,” the Commission should define “small providers” for purposes of the rate freeze as, at a minimum, those providers whose minutes fall entirely within Tier 1 and Tier 2.

B. The Rate Freeze Should Be Extended to Include ZVRS, the Lone Tier 2 Provider, Because the Financial Assumptions Underlying the Justification to Include Only the “Three Smallest Providers” Are Misleading or In Error.

Faulty or incomplete financial assumptions may have caused the Commission to propose a rate freeze only for the smallest three VRS providers. In the view of ZVRS, the Commission may have erred by: (1) Using industry-wide averages for per-minute costs, which ascribe Sorenson’s scale to the smallest providers, thereby producing misleading results; (2) Relying on industry averages

¹⁵ FNPRM at para. 5.

¹⁶ See Purple November 25 Ex Parte at 6.

¹⁷ See Exhibit C.

rather than actual data from ZVRS showing that its projected costs will significantly increase; and (3) Not considering the true costs of providing VRS, which are essential to maintain market share and compete.

1. The Commission Erred by Using Industry-Wide Averages for Per-Minute Costs, Which Ascribe Sorenson's Scale to the Smallest Providers, Thereby Producing Misleading Results.

In proposing to apply the rate freeze to only the three smallest providers, the Commission justified its decision largely by reference to Rolka Loube's 2015 TRS Rate Filing which purports to show that "the VRS compensation rates for 2015-16 are well in excess of average allowable costs for providers as a whole."¹⁸ Rolka Loube calculated the average historical and projected costs by collecting cost data from each VRS provider in early 2015, which was then "summed across the providers by category and then divided by annual VRS minutes."¹⁹ This analysis produced the average industry-wide costs on which the Commission based its decision to apply the rate freeze to only the three smallest providers. Rolka Loube asserted that the average per-minute costs for all VRS providers range from \$3.08 in 2013 down to a projected \$2.93 in 2016.²⁰ However, the current structure of the VRS market renders these figures misleading. It is inaccurate and ineffective to employ averages for an industry as a whole when it is dominated by a single firm, Sorenson, with a market share of 78%. The effect of Rolka Loube's methodology is to attribute the dominant provider's scale to all other providers, and particularly to ZVRS, which is inexplicably treated in the FNPRM as a "large" provider with the two Tier 3 providers that command 90% of the VRS market.

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¹⁸ FNPRM at para. 13.

¹⁹ Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51, at 23 (filed Apr. 24, 2015) ("2015 TRS Rate Filing").

²⁰ *Id.*; FNPRM at para. 13.

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the methodology used by the TRS Fund Administrator and the Commission has produced a misleading result regarding costs per minute and should be reconsidered.

2. The Commission Erred By Assuming that Costs Have Not Increased; ZVRS Submitted Data Showing That Its Projected Costs Have Increased.

The Commission further justified applying the rate freeze only to the three smallest providers by stating that “[p]roviders have not reported any significant increases in VRS costs that would cause us to question whether a reasonably efficient provider is able to operate profitably at the rates set forth in the plan.”²¹ This appears to be untrue. ZVRS—and presumably the other VRS providers—reported significant increases in the costs of providing VRS in a number of categories in response to Rolka Loube’s annual TRS provider data requests in February 2015. In particular, *****BEGIN CONFIDENTIAL INFORMATION*****

*****END CONFIDENTIAL INFORMATION***** These interpreter costs are especially vital to a “reasonably efficient” provider’s ability to gain and retain customers because, as the Commission has noted, “VRS providers compete for users primarily on the basis of quality of service, including the quality of their VRS CAs; a user dissatisfied with the quality of a given provider's VRS CAs can switch to another provider on a per call or permanent basis.”²³

²¹ FNPRM at para. 13.

²² See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projects Annual Recurring Variable Expenses at this level; these figures will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

²³ VRS Reform Order, 28 FCC Rcd at 8689, para. 177. In fact, the quality of a provider’s interpreter pool is doubly important in view of the fact that the costs of marketing and outreach, research and development, and customer premises equipment (“CPE”) is not recoverable, even though each of these items is a necessary condition to a provider’s ability to survive, let alone thrive.

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These data points plainly demonstrate that the increasing costs of providing VRS, in conjunction with the effects of the provider compensation rate cuts, have significantly and detrimentally affected ZVRS's ability to "operate profitably under the rates set forth in the plan"²⁶ and further underscore the importance of extending the rate freeze to include ZVRS, the sole Tier 2 provider.

3. The Commission Erred By Not Considering the True Costs of Providing VRS, Which are Essential to Maintain Market Share and Compete.

The Commission's use of only "allowable" costs when assessing the financial health of VRS providers fails to recognize the true costs ZVRS and the other smaller providers must incur simply to tread water in the market. ZVRS and the other smaller providers have to expend considerable financial resources on activities that are not recoverable to maintain status quo, including

²⁴ FNPRM at para. 13.

²⁵ See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projects Annual Recurring Fixed/Semi-Variable Expenses, Annual Depreciation Associated with Capital Investment, Capital Investments, and Costs Associated with E911 and Numbering with Internet-Based Telecommunications Relay Services at this level; these figures will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

²⁶ FNPRM at para. 13.

investments in: (a) marketing and outreach; (b) providing CPE to customers; and (c) research and development of product enhancements that exceed the mandatory minimum standards. These investments must be made regardless of whether those costs can be recovered, as each is necessary to simple survival, and cannot be overlooked by the Commission.

a. Marketing and Outreach.

In order to compete on quality of service and technological advancement, ZVRS must engage in expensive outreach and marketing activities to inform current and potential customers about enhancements and new product offerings. This is especially important in the VRS market where, as the Commission well knows, there is a finite universe of eligible customers, the majority of whom have already elected a default provider (predominantly Sorenson) and must be thoroughly convinced before switching to, or using, a competitor's service. The job of convincing customers to switch to ZVRS is made significantly more difficult—and therefore more expensive—by the lack of interoperability or portability of users' speed-dial lists and phone books.²⁷ In support of these outreach and marketing activities, which are crucial for ZVRS simply to maintain an approximation of its current volume of business, the company projects it will incur necessary, non-recoverable costs of approximately *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** in 2016 alone.²⁸

b. Providing CPE.

Additionally, ZVRS must also divert resources toward the provision of CPE to its customers in order to stand a chance in the market. The Tier 1 providers have explained that the Tier 3 providers and, in particular, Sorenson, was able to use the extremely high historical compensation

²⁷ See *infra* section II.F.2.

²⁸ See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projects outreach costs of *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION*****; this figure will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

rates to subsidize “expensive and aggressive marketing practices, such as the free distribution of VRS videophones”²⁹ and even free televisions. This practice effectively made the free provision of CPE a prerequisite for obtaining customers, which is still the case today despite the decrease in rates, and requires ZVRS and the other smaller providers to similarly engage in this expensive activity as a *sine qua non* of competing in the VRS market despite the fact that the smaller players do not have the same scale or financial resources as Sorenson to make these investments.

The distribution of CPE to a provider’s users is further necessitated by the lack of full interoperability between providers. ZVRS must move quickly to get its CPE, with the full array of the company’s functionalities, in a newly won customer’s hands before the technical issues precipitated by other providers’ refusal to provide interoperability and portability reverse that customer gain.³⁰ In practice, this plays out as follows: ZVRS, after much expense and effort, is able to win a customer account. When the new customer attempts to make a call via ZVRS on the previous provider’s CPE, the customer experience is not seamless and in many instances the customer contacts the previous provider, who claims that the problem is the ZVRS product (when in fact the cause is the other provider’s refusal to provide interoperability with the ZVRS platform). If ZVRS does not get its own CPE in the customer’s hands quickly enough, the customer will revert to his or her previous provider and ZVRS’s hard-won advance in the market is wiped out. In 2016, ZVRS projects that it will be forced to provide *****BEGIN CONFIDENTIAL INFORMATION*****

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²⁹ Tier 1 Providers Waiver Petition at 12.

³⁰ See also *infra* section II.F.2.

³¹ See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projects CPE costs at this level; these figures will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

INFORMATION*]** These legitimate and necessary costs should be taken into consideration by the Commission as it examines extension of the rate freeze.

c. Research and Development.

As the Commission has acknowledged, because VRS users do not need to assess cost differences among providers, providers compete on “factors such as quality of service, customer service, and technological development.”³² This requires all VRS providers, including the smallest four, to invest in research and development to enhance their current service offerings and bring new products to market. These costs should also be taken into consideration.

C. The Freeze Should Be Extended to the Sole Tier 2 Provider Because Its Operating Realities Are Far More Similar to the Tier 1 Providers than to Sorenson, and Similarly Situated Providers Should Be Treated the Same.

The Commission should extend the rate freeze to include ZVRS, the only provider whose minutes fall entirely within Tier 1 and part of Tier 2, because the ways in which it must operate to survive in the VRS market are strikingly similar to the efforts the smallest Tier 1 providers are forced to undertake. This is because: (1) The Tier 1 and Tier 2 providers offer needed, unique services to niche and underserved communities; (2) The Tier 1 and Tier 2 providers do not possess the scale needed to disperse the costs of providing VRS in the manner as Sorenson; (3) The competitive efforts of the Tier 1 and Tier 2 providers are stymied by the lack of interoperability with the larger providers’ technology and the absence of portability of user contacts and speed-dial lists; and (4) The rate cuts in Tier 1 are the largest in the glide path and disproportionately impact the Tier 1 and Tier 2 providers whose minutes reside entirely or predominantly in Tier 1.

1. The Tier 1 and Tier 2 Providers Offer Needed, Unique Services to Niche and Underserved Communities.

³² 2011 VRS FNPRM, 26 FCC Red at 17378, para. 14.

As described in Section I.A above,³³ ZVRS and the Tier 1 providers need special support from the FCC because they make unique contributions to the VRS program and VRS users by offering differentiated services that the deaf community needs. ZVRS provides a unique service by employing only extraordinarily qualified, RID-certified interpreters who provide efficient and high-quality VRS conversations, possessing a unique perspective because its management and staff are majority deaf or hard of hearing, and providing 24/7 service and Spanish-language interpretation, each of which ZVRS introduced to the VRS market. As the small providers noted in their Emergency Petition: “The Commission repeatedly has recognized the substantial public interest benefits generated by the continued participation of the Tier 1 providers in the VRS industry and the need to give the Tier 1 providers an opportunity to increase their volume of relayed minutes to enable them to realize the economies of scale enjoyed by the larger VRS providers.”³⁴ Similar to the smallest three providers, ZVRS provides substantial public interest benefits and should be provided the opportunity to stabilize its business and grow market share so that it can continue to provide the significant benefits to the deaf and hard of hearing community that it currently provides.

2. The Tier 1 and Tier 2 Providers do not Possess the Scale Needed to Disperse the Costs of Providing VRS in the Manner as Sorenson.

The Tier 1 and Tier 2 providers also bear higher costs due to their current inability to benefit from economies of scale. As described below, and as pointed out recently by the Tier 1 providers, the smaller VRS providers are “forced to fund the substantial costs of complying with the consistently shifting VRS regulatory landscape without having the same large customer bases across which the larger VRS providers distribute such costs.”³⁵ The same is true for ZVRS. It must finance the same platform, services, and CPE as Sorenson, and it must finance responding to the

³³ See *supra* section I.A.

³⁴ Tier 1 Providers Waiver Petition at 6.

³⁵ See Tier 1 Providers Waiver Petition at 11-12.

Commission's VRS initiatives at great expense, but it does not have the same minutes of use across which it can distribute these costs.

3. The Competitive Efforts of the Tier 1 and Tier 2 Providers are Stymied by the Lack of Interoperability with the Larger Providers' Technology and the Absence of Portability of Users' Contacts and Speed-dial Lists.

The Tier 1 and Tier 2 providers cannot compete with the largest providers because there is a lack of true interoperability. The largest providers, principally Sorenson, have been "historically . . . compensated at levels that [far] exceed their actual costs" and thus were able to fund "expensive and aggressive marketing practices, such as the free distribution of VRS videophones,"³⁶ and even free televisions, that served to firmly entrench these large providers in VRS users' homes, providing a significant first-mover advantage that no competitive provider has yet been able to overcome. As a consequence, ZVRS and the other smaller providers have had to compete on the margins "through providing different and innovative services."³⁷ Even when ZVRS is able to make marginal gains, they are frequently rendered temporary by the fact that other providers do not allow for interoperability or the portability of users' speed-dial lists and phone books, which discourages VRS customers from switching providers.³⁸

4. The Rate Cuts in Tier 1 are the Largest in the Glide Path and Disproportionally Impact the Tier 1 and Tier 2 Providers whose Minutes Reside Entirely or Predominantly in Tier 1.

The Tier 1 and Tier 2 providers also are facing more substantial rate cuts, overall, than the largest providers. *****BEGIN CONFIDENTIAL INFORMATION*****

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³⁶ *Id.* at 12.

³⁷ *Id.*

³⁸ See *infra* section II.F.2; see also VRS Reform Order, 28 FCC Rcd at 8643, para. 50 ("We find that VRS interoperability and portability standards should include the portability of address book and speed dial list features.").

INFORMATION*]** The Commission must take note that the Tier 1 rates are slated to fall by a greater percentage and total dollar amount than the rates in any other Tier. As Tier 1 providers recently asserted, “[d]uring the applicable four-year period, the Tier I rate is scheduled to fall \$2.17 per minute or approximately 35%, while the Tier III rate is scheduled to fall \$1.60 or approximately 31%.”³⁹ Larger VRS providers, and certainly Sorenson, are able to absorb these cuts by fully exploiting the stable Tier 2 rate *****BEGIN CONFIDENTIAL INFORMATION***]**

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and exploiting the less severe decline in the Tier 3 rate. ZVRS and the other smaller providers are placed in the impossible position of trying to grow their businesses while the revenues from the bulk of their minutes decline and the costs of providing VRS increase. Indeed, as even Purple Communications has explained, in the absence of a rate freeze for the smaller providers, “[w]ith little to no operating margin, the ability for the small and tiny providers to compete will only be further handcuffed within the market.”⁴⁰

For all of these reasons, the Commission must find that ZVRS, the lone Tier 2 provider, is far more similar to the smallest three providers than it is to Sorenson, and it should treat similarly situated providers the same by extending rate relief to ZVRS.

D. Failure to Apply the Rate Freeze in a Competitively Neutral Manner to All “Smaller VRS Providers” in Tier 1 and Tier 2, Including ZVRS, Would Be Inequitable and Discriminatory Against ZVRS, Unfairly Disadvantaging Them Among the Smaller VRS Providers.

Fundamental principles of fairness and equity require that the Commission approach the VRS rate freeze with competitive neutrality, necessitating the extension of the rate freeze to *all* similarly-situated providers in Tier 1 and Tier 2. Implementing the rate freeze as proposed in the

³⁹ Tier 1 Providers Waiver Petition at 4, n.14.

⁴⁰ See Purple November 25 Ex Parte at 5.

FNPRM would create a VRS compensation regime that unreasonably discriminates among similarly situated providers, and against ZVRS, in violation of the principle of competitive neutrality.

In establishing principles to guide its oversight of the Universal Service Fund, the Commission adopted “competitive neutrality” as a value.⁴¹ The Universal Service Fund is similar to the TRS Fund in that each program is intended to ensure the availability of needed telecommunications services for communities where such services would not be available absent additional support.⁴² The principle of competitive neutrality requires the Commission to ensure that its “mechanisms and rules neither unfairly advantage nor disadvantage one provider over another.”⁴³ Similar values underpin the Telecommunications Act itself, as the Commission has noted that “promoting competition is an underlying goal of the 1996 Act and that the principle of competitive neutrality is consistent with that goal.”⁴⁴

In the present case, the Commission should apply the principle of competitive neutrality to the matter of the rate freeze, extending it to the only Tier 2 VRS provider whose operating realities closely mirror those of the Tier I Providers.⁴⁵ Failure to apply the rate freeze in a competitively neutral manner will be inequitable to and will discriminate against ZVRS. If the rate freeze is adopted as proposed, the Tier I Providers would be compensated at rates significantly higher than ZVRS despite the fact that the smallest three providers and ZVRS all command minutes that are either entirely or predominantly within Tier 1, and all of the smaller providers are burdened with the same fixed costs, the same competitive pressures, and the same lack of scale.⁴⁶ The Tier 1 and Tier

⁴¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at para. 46 (1997) (“Joint Board Report”).

⁴² Although the Commission has not yet expressly adopted the principle of competitive neutrality in the TRS context, given the parallel purposes of USF and TRS, it would be arbitrary and inconsistent for the Commission to proceed differently in overseeing the two programs.

⁴³ Joint Board Report at para. 47.

⁴⁴ *Id.* at para. 51.

⁴⁵ See *supra* section II.C (discussing the similarities between Tier 1 and Tier 2 providers).

⁴⁶ *Id.*

2 providers also offer needed, unique services to niche and underserved communities,⁴⁷ are stymied in their efforts to grow by the lack of interoperability with the larger providers' technology and the absence of portability of users' contacts and speed-dial lists,⁴⁸ and will all be disproportionately impacted by the rate cuts in Tier 1, which are the largest in the glide path.⁴⁹ To avoid this outcome, the Commission should approach the rate freeze in a competitively neutral manner, extending the freeze to all similarly situated VRS providers in Tier 1 and Tier 2.⁵⁰

E. The Rate Freeze Should be Extended to Include ZVRS Because the Reduction in the Tier 1 and Tier 2 Rates for the Second Half of 2016 is the Largest Ever Rate Reduction for the VRS Program and Will Have a Devastating Impact on the Ability of the Lone Tier 2 Provider to Compete.

In addition to the Tier 1 rate decrease in January of 2016 from \$5.06 to \$4.82 per minute, on July 1, 2016 the rates for both Tier 1 and Tier 2 minutes are slated to drop from \$4.82 to \$4.44 per minute. This \$0.38 drop in per-minute compensation is the largest cut in the four-year glide path by a considerable margin, and represents an 8% cut in the compensation paid on a VRS provider's first 1,000,000 monthly minutes. *****BEGIN CONFIDENTIAL INFORMATION*****

⁴⁷ See *supra* section II.C.1.

⁴⁸ See *supra* sections II.C.3, II.F.2.

⁴⁹ See *supra* section II.C.4.

⁵⁰ Because the Tier 3 providers—in particular, Sorenson—are not similarly situated to ZVRS and the other smaller providers by virtue of the efficiencies created by their scale, the exclusion of the Tier 3 providers would not “unfairly . . . disadvantage” the larger providers and the principle of competitive neutrality thus does not require their inclusion in the rate freeze. See Joint Board Report at para. 47.

⁵¹ See Exhibit C.

*****END CONFIDENTIAL INFORMATION***** This, in turn, makes the required growth levels—which in any circumstance would be incredibly difficult to achieve—a practical impossibility.

Furthermore, although the Commission may take the view that the glide path rates were established in 2013, and the Tier 2 rates in particular were set at a stable level of \$4.82 for three years to provide smaller providers time and opportunity to scale and prepare for the 2016 cuts, the reality is that the opportunity for these smaller providers to grow has never materialized as anticipated. The data submitted herein shows that ZVRS's minutes have not grown to take advantage of the fact that the Tier 2 rate has been relatively stable.⁵² Instead the company's minutes in Tier 2 have plateaued and are declining. ZVRS has not been able to take full advantage of the Tier 2 rate stability. In contrast, the rates for Tier 1 minutes, *****BEGIN CONFIDENTIAL**

⁵² See *supra* section I.B.

⁵³ *Id.*

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CONFIDENTIAL INFORMATION***] will have fallen by \$1.54—26%—during the period in which the Tier 2 rates have been stable. ***BEGIN CONFIDENTIAL INFORMATION***]

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In the absence of relief from the VRS Reform Order glide path, ZVRS will be faced with ***BEGIN CONFIDENTIAL INFORMATION***]

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⁵⁴ FNPRM at para. 15.

⁵⁵ See *supra* section I.A.

F. The Freeze Should be Extended to Include ZVRS Because There is Not a Level Playing Field for VRS Services Today, and All Smaller Providers Need Rate Relief In Order To Compete with Tier 3 Providers.

The Commission should extend the freeze to include ZVRS because the high degree of concentration in the VRS market, coupled with the smaller providers' lack of scale, and the absence of interoperability and portability, effectively precludes competition with Tier 3 providers, particularly Sorenson, the one dominant, near-monopoly provider. Without rate relief for the Tier 1 and Tier 2 providers, Sorenson's market power will be further entrenched.

1. The Market Concentration Imbalance, and the Barriers to Entry, Make it Nearly Impossible for Tier 1 and Tier 2 Providers to Effectively Retain Market Share or Compete Under the Current Rate Structure.

In establishing the glide path compensation rates, and proposing to partially freeze those rates in the FNPRM, the Commission tacitly acknowledged the competitive imbalance affecting the VRS market. The Commission rightfully frames its decisions in terms of the need to "provide a reasonable opportunity for the smallest providers to reach 'minimum efficient scale.'"⁵⁶ As the Government Accountability Office has found, the VRS market is highly concentrated, with the two Tier 3 providers controlling over 90% of the market, while the remaining four smaller providers—including ZVRS—are left to compete for less than 10%.⁵⁷ In fact, *****BEGIN**

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CONFIDENTIAL INFORMATION*]** This market concentration is particularly relevant to the Commission's inquiry in this proceeding. Tier 1 and Tier 2 VRS providers are faced with the same fixed costs as the larger providers in order to comply with the mandatory minimum standards, recruit and employ qualified interpreters, attract and retain customers, provide customer care

⁵⁶ *Id.* (citing 2011 VRS FNPRM, 26 FCC Rcd at 17397, para. 58).

⁵⁷ See Government Accountability Office, Telecommunications Relay Services: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities, GAO-15-409, at 46 (Apr. 29, 2015), available at <http://www.gao.gov/products/GAO-15-409> (last accessed Dec. 4, 2015).

services, maintain and improve infrastructure, and develop new products. While these costs are common to all VRS providers, Sorenson is better positioned to bear these costs by virtue of the fact that it is able to diffuse its expenses across a dramatically higher volume of compensable minutes. The smaller providers, including ZVRS, have yet to achieve such a level of scale as to allow them to similarly defray these costs. Thus, relative to Sorenson, the costs borne by the Tier 1 and Tier 2 providers are disproportionately higher. In view of these market conditions, and as the Commission noted in the FNPRM, it is imperative to provide the smaller VRS providers, including ZVRS, a reasonable opportunity to grow their businesses to a level at which meaningful competition is possible.⁵⁸

2. The Absence of Interoperability and Portability, and the Delay in Implementing the Promised Structural Reforms, is Exacerbating the Ability of Tier 1 and Tier 2 Providers to Achieve the Scale Necessary to Compete.

It is especially vital that the Commission afford Tier 1 and Tier 2 providers rate relief while the Commission continues to implement structural reforms identified in the VRS Reform Order. In view of the already high barriers to entry and the entrenched power residing in Sorenson, the continuing absence of full interoperability and portability is devastating for smaller providers who are unable to make consistent inroads in the market. Even if a competitive provider is able to win over a customer from another provider, that gain is frequently short-lived, as some providers continue to refuse to provide interoperability with their competitors, causing the user to encounter technical difficulties. For instance, when a provider launches new products or bug fixes without first coordinating with the other providers to verify interoperability among their technologies, the customer may experience black screens or disconnects, which produce understandable confusion and frustration on the customer's part. The natural inclination is to assume that the new provider, rather than the previous provider's refusal to provide interoperability, is the cause of the problems,

⁵⁸ See FNPRM at para. 15.

and this frequently results in the customer reverting back to their old provider. Similarly, the fact that other providers do not port deaf users' contacts and speed dial lists forces deaf users to re-key each individual contact in their phone books, a significant impediment to changing providers. The effect of these practices is to increase switching costs for VRS users, disadvantaging them over the hearing population (whose contact lists readily transfer), and discouraging them from switching providers. All of this renders temporary a significant portion of customer gains that are achieved by competitive providers like ZVRS.⁵⁹

To counter these practices, the smaller providers are forced to spend more and more on non-compensable outreach, marketing activities, providing CPE, and providing technical support and customer service because other VRS providers' refuse to provide interoperability and portability. During the glide path period, ZVRS has had to spend approximately *****BEGIN CONFIDENTIAL INFORMATION***** *****END CONFIDENTIAL INFORMATION***** per year on outreach and CPE just to maintain an approximate volume of minutes.⁶⁰ Combined with the semiannual reductions in compensation rates, this traps ZVRS and the other smaller providers in a never-ending "one step forward, two steps back" cycle that makes it nearly impossible to "reach the optimum scale to compete effectively."⁶¹

⁵⁹ Given the effect of these practices, ZVRS commends the Commission's commitment to implementing the Accessible Communications for Everyone platform, but urges the Commission to view this as only the first step of many needed to create a legitimately competitive VRS market. To that end, ZVRS is pleased with the formation of the TRS-VRS Center of Expertise as a technical body dedicated to improving the technology used by persons who are deaf, hard of hearing, deaf-blind, and/or have speech disabilities by fostering innovations that advance functionally equivalent telecommunications through multi-stakeholder collaboration.

⁶⁰ See Exhibit B. The ZVRS 2014 Annual TRS Provider Rate Filing projected 2015 and 2016 outreach costs in this range; these figures will be updated when ZVRS makes its data submission to Rolka Loube in February 2016.

⁶¹ FNPRM at para. 5.

G. Extending the Rate Freeze to the Sole Tier 2 Provider Will Benefit the Deaf and Hard of Hearing Community and the VRS Program as a Whole.

Extending the freeze to include ZVRS will benefit the deaf community and advance functional equivalency because it will: (1) Allow ZVRS to direct its efforts and resources toward growing customers rather than merely surviving, which will promote a level of competition that does not currently exist in the VRS market; (2) Support the provision of needed services to niche and underserved communities; and (3) Support high-quality, efficient VRS services that reduce the number of minutes billed to the TRS Fund.

1. Extending the Freeze Will Allow ZVRS to Direct its Efforts and Resources Toward Growing Customers Rather than Merely Surviving; Promoting a Level of Competition that Does Not Currently Exist in the VRS Market.

Competition in the VRS market does not exist today. Extending the freeze to include ZVRS will benefit the deaf and hard of hearing community by supporting the viability of a service that puts their needs first. The Commission has repeatedly emphasized the public interest benefits of robust competition among multiple VRS providers, having stated its goal to “ensure ‘intense competition among a number of qualified vendors in the telecommunications relay services market.’”⁶² Although there may one day be public interest benefits from robust competition in the VRS market, such competition does not exist today, a fact about which the Commission is aware. Competition will not be possible until the structural reforms discussed by the Commission in the VRS Reform Order are fully implemented and the market imbalances are remedied. Until that time, Commission support of smaller Tier 1 and Tier 2 providers is essential.

⁶² 2011 VRS FNPRM, 26 FCC Rcd at 17378 para. 14 (internal citations omitted).

2. Extending the Freeze Will Support the Provision of Needed Services to Niche and Underserved Communities.

Extending the freeze to ensure the sole Tier 2 provider is included will further the Commission's interest in ensuring that niche and underserved communities' VRS needs are met.⁶³ Most importantly, and reflective of its commitment to providing the deaf and hard of hearing community with *real* functional equivalence, ZVRS has established a niche in the VRS market that provides tangible benefits to both consumers and the TRS Fund itself: the use of only RID-certified interpreters. In addition, and as is the case with other smaller providers, a majority of ZVRS's employees and many managers are deaf or hard of hearing, which provides the company "a unique perspective regarding how to prioritize and respond to the needs of VRS users" and prompted ZVRS to be the first provider to "launch a variety of innovations" including 24/7 service and single-line voice carryover. These services are common today, but ZVRS introduced them to the market.⁶⁴ ZVRS was also the first to provide interpretation to the "largely underserved Spanish-language community," and continues to do so today.⁶⁵

3. Extending the Freeze Will Support High-Quality, Efficient VRS Services that Reduce the Number of Minutes Billed to the TRS Fund.

The employment of only the best interpreters—who have successfully met RID certification requirements that are much more rigorous than the baseline qualifications employed by other providers—provides the highest possible quality of conversation between the VRS user and the voice telephone user. This quality of service manifests itself in a significantly lower frequency of delays in interpretation, fewer requests for repetition or clarification, and fewer repeat calls, thereby dramatically increasing the efficiency and functional equivalence of the VRS when compared to the use of less skilled, less experienced interpreters.

⁶³ See FNPRM at para. 21.

⁶⁴ Tier 1 Providers Waiver Petition at 7; *see also supra* section I.A.

⁶⁵ Tier 1 Providers Waiver Petition at 8.

Testimonials from ZVRS customers explain the importance of the high-quality service that ZVRS provides (for a full recitation of comments from ZVRS customers, see Exhibit A). To receive service that is actually functionally equivalent, ZVRS customers “expect (and demand) that a competent interpreter process my calls, so that my academic terminology and context is properly conveyed. I’ve noticed that when I used other providers with ‘lesser qualified’ interpreters, frustration is the near-universal result. The reason: misunderstandings inevitably happen, and my calls last longer due to my insistence of clarifying the message in both directions.”⁶⁶ Another customer commented: “It is crucial to have certified interpreters to provide services through video relay services to ensure that information is conveyed to the videophone user in a clear, concise manner. Information from physicians, specialists, attorneys, family matters, etc. all require professional certified interpreters.”⁶⁷

These better and more efficient conversations ultimately save the TRS fund money, as VRS calls that are placed are processed timely and without the need for additional resources. Take, for example, 911 calls, in which any delay in interpreting the needs of the VRS user or the response of the 911 operator can have dire consequences, and in which the stress on the interpreter is incredibly high. These calls are best handled by those certified and experienced interpreters that have deep skill sets and meaningful experience.

Other VRS providers may save costs by hiring non-RID-certified interpreters to process calls. The Commission should study the accuracy of initial calls and the length of those calls, and the need for any follow up calls—all of which burden the fund – across all VRS providers. By improving the quality and the flow of VRS conversations and reducing interpreting delays, the ZVRS service offers the added benefit of shortening the time necessary to complete a call, and

⁶⁶ See Exhibit A (providing ZVRS customer testimonials attesting to the importance of employing certified interpreters).

⁶⁷ *Id.*

reducing the number of minutes billed to the TRS Fund. The employment of RID-certified interpreters thus allows ZVRS to provider VRS “in the most efficient manner.”⁶⁸ Extension of the rate freeze to include the only Tier 2 provider would allow ZVRS to continue to provide this service, which is valuable both to the deaf and hard of hearing community and the TRS fund.

H. The Deaf Community Is Already Alarmed by Deterioration of VRS Service Because of Prior Rate Cuts and Supports Expansion of the Rate Freeze; Without Expansion to include ZVRS, at a Minimum, Service from the Sole Tier 2 Provider Will Deteriorate.

The need for the Commission to freeze compensation rates for Tier 1 and Tier 2 providers is further highlighted by the fact that, even in advance of the cuts slated for 2016, the VRS service has begun to see unwelcome changes in quality of service. As the National Association of the Deaf (“NAD”) stated in summarizing a recent call with Commission staff, VRS users are growing increasingly “concerned that the quality of relay services is being further negatively impacted by the ongoing rate cuts for all other providers. The Commission responded that their analysis shows only the small providers are at risk of suffering quality impacts; however, our experience and the experience of our community is that the deterioration of video relay quality is already evident across the board.”⁶⁹ In fact, during that call, “the relay interpreter from a certain larger provider was unable to handle the call and had to be replaced.”⁷⁰

Observations from NAD are consistent with the experience of ZVRS. As ZVRS has previously expressed to the Commission, *****BEGIN CONFIDENTIAL INFORMATION*****

⁶⁸ 47 U.S.C. § 225(b)(1).

⁶⁹ Letter from Zainab Alkebsi, Policy Counsel, NAD, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, at 1-2 (filed Nov. 20, 2015) (“NAD November 20 Ex Parte”).

⁷⁰ *Id.* at 2.

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This consistency, in turn, would allow ZVRS to more effectively monitor and improve the quality of its interpreting services, and thereby improve the functional equivalence of its product.

Under the current rate structure, however, *****BEGIN CONFIDENTIAL**

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explains on behalf of VRS users, “VRS providers must be compensated sufficiently to improve the quality of VRS through innovation, and to adequately train and pay their interpreters.”⁷³

III. THE COMPENSATION RATE FREEZE FOR TIER 1 AND TIER 2 PROVIDERS SHOULD REMAIN IN PLACE UNTIL THE STRUCTURAL REFORMS ARE FULLY IMPLEMENTED AND THE MARKET HAS HAD TIME TO RESPOND.

In setting the time frame for the glide path rates, the Commission based the four-year term “on the assumption that implementation will not take longer than four years,” and stated that “[i]n

⁷¹ See CSDVRS’s Response to Staff Questions re VRS Providers’ Joint Proposal for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51, 03-123, at 1-3 (filed Apr. 21, 2015).

⁷² *Id.*

⁷³ NAD November 20 Ex Parte at 2.

the event that it takes a shorter or longer period, we will reassess the rates at the appropriate time.”⁷⁴ ZVRS agrees with the Commission that now is an appropriate time to reassess the rates. The Commission proposed a maximum 16-month rate freeze.⁷⁵ However, as described above,⁷⁶ ZVRS and the smaller providers will not be able to generate the scale required to meaningfully compete with the Tier 3 providers until the structural reforms aimed at lowering barriers to entry and fostering robust competition are fully implemented. This will likely take longer than 16 months. Until these reforms are in place, including those needed to ensure interoperability of provider hardware and software, and portability of VRS users’ phone books and speed-dial lists, the state of competition in the VRS market will remain status quo. The Commission and virtually all stakeholders agree that the status quo is unacceptable, and the Commission should thus tie the expiration of the rate freeze to implementation of these structural reforms. In fact, the Commission has previously linked the impact of the structural reforms to the glide path established in the VRS Reform Order, saying the glide path’s purpose was to “ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach the optimum scale to compete effectively *after the implementation of structural reforms*.”⁷⁷ In view of the fact that rates have continued to decrease while progress toward implementing the structural reforms has been slow—and, in the case of some reforms, abandoned entirely⁷⁸—the Commission should make this tie explicit.

⁷⁴ VRS Reform Order, 28 FCC Rcd at 8704, para. 212, n.555.

⁷⁵ FNPRM at para. 19.

⁷⁶ See *supra* section II.F.

⁷⁷ VRS Reform Order, 28 FCC Rcd at 8704, para. 214 (emphasis added).

⁷⁸ See

https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=a46d5349dcf91a31fb11a85811526aef&_cvi (announcing the cancellation of the RFP for development of the neutral VRS telecommunications service platform).

ZVRS agrees with Purple that until structural reforms are actually implemented the current scheduled rate cuts should be suspended.”⁷⁹ As Purple aptly noted in an ex parte communication:

The Commission has correctly identified structural issues that threaten the long-term viability of the VRS program, including the suboptimal structure of the VRS industry as a whole, and the inappropriate lock-in of VRS users by the dominant provider of Services. In 2011, the Commission opened a proceeding to address and correct these market imbalances, caused in large part by anticompetitive practices. The Commission specifically recognized the desire for consumers to have a choice of providers, and the fact that obstacles to switching providers – many of which remain in place today – severely limit consumer choice, and perpetuate market share concentration. Until those market imbalances are corrected, and anticompetitive practices and features are fully corrected, the Commission should not place an undue burden on the 5 competitive providers via a further rate cut mechanism.

Allowing the market a reasonable amount of time in which to react to structural reforms will also provide the Commission with an opportunity to assess the actual effects of implementation on VRS provider costs and ensure the reforms make sound policy. Presently, these effects are merely speculative, and it would be both premature and inefficient for the Commission to decide on the appropriateness of further rate cuts, or the timing thereof, based solely on this speculation. The Commission should therefore, at a minimum, freeze rates for Tier 1 and Tier 2 at the levels in effect on June 30, 2015 until the structural reforms identified in the VRS Reform Order are fully implemented and the market has had a reasonable opportunity to respond to their effects.

In the alternative, if the Commission elects to set the freeze to expire by a particular date, the freeze should remain in place for the full 16 months proposed in the FNPRM to provide the four smallest providers the greatest possible opportunity to reach a minimum efficient scale, grow their businesses, maximize their chances for success, and compete effectively under fair competitive conditions.⁸⁰ As discussed above, the rate cuts, the absence of true interoperability and portability,

⁷⁹ Purple November 25 Ex Parte at 6.

⁸⁰ See FNPRM at paras. 4, 12, 15, 24.

and the delay in structural reforms have combined to make it impossible for Tier 1 and Tier 2 providers to build the optimum scale needed to compete effectively.⁸¹ Moreover, the rate cuts and structural reforms have not proceeded in parallel as the Commission anticipated, but have instead progressed at very different speeds. Freezing the Tier 1 and Tier 2 rates at the levels in effect on June 30, 2015 for the full 16 months proposed in the FNPRM will provide an opportunity for the Commission's reform efforts to "catch up" to the rate cuts while smaller providers stabilize their operations and refocus on growth rather than mere survival.

For the same reasons, and to prevent the kind of jarring, disruptive drop in rates that prompted the Commission to adopt a glide path in the VRS Reform Order,⁸² rates should resume after expiration of the freeze "at the point where they left off, *i.e.*, with the rate previously established for the July 1 – December 31, 2015, period."⁸³ If the Commission does impose a firm expiration date on the rate freeze, it is imperative that the Commission focus its efforts during the term of the freeze on ensuring that the structural reforms vital to levelling the playing field are in place—or will be in place imminently.

IV. CONCLUSION

ZVRS, a small Tier 2 provider of VRS service and a pioneer in the VRS industry, urges the Commission to redraw the "dividing line" for the rate freeze and extend it to *all* "smaller VRS providers." At a minimum the line should be moved to include, ZVRS, the lone Tier 2 provider, because the Commission has acknowledged that the "smaller VRS providers," that need opportunities to reach scale and compete effectively, include Tier 1 and Tier 2 providers.

The compensation rates applicable to Tier 1 *and* Tier 2 providers should be frozen at the levels in effect for Tier 1 and Tier 2 on June 30, 2015. This freeze should remain in effect until the

⁸¹ *See supra* section II.F.

⁸² VRS Reform Order, 28 FCC Rcd at 8692, 8694, paras. 183, 188.

⁸³ FNPRM at para. 20.

Commission implements the competitive reforms promised in the Commission's 2011 VRS FNPRM, including mandates for interoperability and portability.

As discussed herein, *****BEGIN CONFIDENTIAL INFORMATION*****

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As discussed in these comments, there are many worthy justifications for the Commission to redraw the dividing line for the proposed rate freeze to include the sole Tier 2 provider, ZVRS.

Without rate relief for ZVRS, the Tier 1 and Tier 2 rate cuts during the proposed 16-month rate freeze period will cause ZVRS to lose *****BEGIN CONFIDENTIAL**

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*****END CONFIDENTIAL INFORMATION***** additional minutes in order to make up the shortfall. This result is almost impossible at a time when ZVRS' minutes are already in a decline.

For all the reasons stated herein, ZVRS pleads with the Commission to extend the rate freeze to all “smaller VRS providers,” including ZVRS, until the anticipated structural reforms are in place, supporting the important work ZVRS has been doing for the deaf and hard of hearing community for the past 16 years.

Respectfully submitted,

_____/s/_____
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EXHIBIT A

ZVRS Customer Testimonials

“Having certified interpreters interpret my VRS calls is essential in my book. Thinking about it, I call VRS for mundane things (like setting up appointments) to calls with family members discussing the various complex issues that may arise.

I can't emphasize enough that it simply doesn't work with a non-certified interpreter. When I make VRS calls, I expect (and demand) that a competent interpreter process my calls, so that my academic terminology and context is properly conveyed. I've noticed that when I used other providers with 'lesser qualified' interpreters, frustration is the near-universal result. The reason: misunderstandings inevitably happen, and my calls last longer due to my insistence of clarifying the message in both directions.

When a family member was near death, I found myself making multiple calls; using certified interpreters helped immensely because I noticed a structured framework in which a certain VI was able to communicate with me her lack of expertise in hospice care, in which we were able to work together to find a good resolution. I worry that non-certified interpreters will not yet have had the 'intuition' to recognize that they may be in over their heads, instead choosing to 'wing it' at the expense of my conversations. Again, that easily brings out frustrations for both me and the hearing caller, as well as confusion which result in an even-longer call as I work to clear things up.

The bottom line is: interpreters ought to build their skills in the various subjects available in 'community interpreting' before they advance to VRS and the unpredictable nature of VRS calls.”

- Jack, Austin, TX

“It is crucial to have certified interpreters to provide services through video relay services to ensure that information is conveyed to the videophone user in a clear, concise manner. Information from physicians, specialists, attorneys, family matters, etc. all require professional certified interpreters. Videophone users are folks like me who rely on videophone interpreters to make calls. As a videophone user both professionally and personally, I know that ZVRS certified interpreters will convey the information concisely. Without certified interpreters, the communication between me and the person would be broken which would cause unwanted confusion and misunderstandings. Certified interpreters are our door to EQUAL ACCESS! In fact, there should be a federal mandate that all video relay service providers should be required to hire certified interpreters!”

- JulieAnn, Washington, DC

“Our public expects professionals we seek, be it a doctor, attorney, teacher, counselor, to be fully certified to perform their work and come to the task fully prepared and more importantly worthy of trust. Interpreting is no exception given this is a highly complex process that requires a high degree of linguistic, cognitive and technical skills in both English and American Sign Language (ASL). Sign language interpreting like spoken language interpreting involves more than just signing a word of spoken English with an appropriate sign for that word. Interpreters must thoroughly understand the cultural nuances that come with interpreting. Interpreters who struggle with their own expressive and receptive sign skills are difficult to understand, and interpret/transliterate messages accurately. This situation benefits no one. I have had the unfortunate experience of working with non-certified interpreters in many settings that formed an unfavorable impression not only for me but those

involved in the process thus negated my credibility as an individual. Certification is unquestionably a mandatory requirement that should be enforced across all settings including video relay services.”

- AnnMarie, Austin, TX

“I work as a writer and I often interview people over the phone using VRS. The quality of my work is strongly contingent on the quality of the interpreting--and I expect no less than certified interpreters on the call.”

- Karen, Chicago, IL

“I find ZVRS interpreters so qualified any time of the day whereas other providers, I could tell their evening interpreters are less qualified.”

- Sherry, Ocean View, DE

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EXHIBIT B

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EXHIBIT C

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